

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION FEBRUARY 1, 2005

Mayor Bernard called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Councilors Barnes, Collette, Loomis, and Stone.

Staff Present: City Manager Mike Swanson and Finance Director Stewart Taylor.

Information Sharing

Mayor Bernard received calls about installing a sign for 22nd Avenue off McLoughlin Boulevard. There was a business located on that street that was difficult to find.

Mr. Swanson provided a list of proposed goals for Council consideration.

Scheduling

- Goal Setting and Review of Communications Agreement – February 19, 8:30 a.m. in the City Hall Conference Room.
- Council Retreat – April 2 & 3, location to be determined.
- Council photos – February 15.

Public Contracting Rules

Mr. Firestone provided information on the 2003 Legislature's major revisions to the public contracting statutes effective March 1, 2005. The Cities of Milwaukie, West Linn, and Tigard partnered in the preparation of the proposed Rules to be considered for Council adoption. He reviewed the main sections and discussed the process and application of the rules.

- Section 10 listed exemptions to the requirements for a competitive process, and Mr. Firestone reviewed some of those. He discussed the rules for public improvement contracts that had design and/or construction management aspects. There was a provision that allowed the City Council to create individual exemptions in specific cases.
- Chapter 15 provided details of price agreements.
- Chapter 20 governed brand names or marks. He explained that one could not identify a brand name under state law when preparing specifications. This ensured that the government entity was not unfairly favoring a vendor by specifying a particular manufacturer.
- Chapter 25 addressed emerging small businesses and the requirement that the City consider those.
- Chapter 30 outlined the formal competitive process that was either an invitation to bid or request for proposals. In that process, the Council made

the ultimate decision acting as the Local Contract Review Board. The Council may from time to time hear a procedural question.

- Section 40 spoke to public improvement contracts and competitive bidding requirements.
- Section 50 discussed security for bids and performance bonds.
- Section 60 related to the disposition of personal property and allowed transfers to other government agencies, non-profits, and sales that were designed to achieve maximum dollars at a minimum transaction cost.
- Section 70 discussed personal services contracts, which, if it were a large contract, would be subject to the RFP process. There was an obvious exemption for emergency situations.
- Section 90 had provisions that required recycled or recyclable goods

Mr. Firestone said the proposed Rules would be before the City Council acting as the Local Contract Review Board in a public hearing on February 15.

Councilor Collette understood contracts over \$25,000 would still come to the City Council after a process other than a formal competitive process.

Mr. Firestone replied that was defined in the Rules. If the contract was between \$25,000 and \$50,000 and did not come under one of the other exemptions, then the intermediate process of soliciting at least three bids would be used. Under the current rules, the exemption for contracts under \$25,000 was the same as the city manager's signature authority. He noted these rules did not raise the authority of the city manager or any other staff member to spend money. There may be contracts coming before the City Council simply because they were greater than \$25,000 but less than \$50,000 that did not go through the formal competitive process. The Council could review the process and could say it did not like it.

Councilor Stone asked for some examples of exemptions that were eliminated because they were not being used.

Mr. Firestone said one had to do with library exemptions as well as several others.

Councilor Stone asked what was being changed in regards to protests.

Mr. Firestone replied the time for some protests was shortened and provided for clearer requirements regarding the City's notice of intent to award a contract.

Councilor Stone asked what compelled the legislature to revise this.

Mr. Firestone thought the most important reason was that the chapter with the public contracting statutes grew over time and had become very disorganized. This change organized the chapter into three sections: the general rules, rules applicable to goods and services, and rules applicable to public improvements. The intent of revising the rules was not to make too many substantive changes, but he did take advantage of streamlining a few things. One substantive change was the exemption for contracts under a certain dollar amount. The state went from a relatively low number to \$150,000 for some contracts. The local group

working on the re-write of the rules decided to keep a more active role for the respective Local Contract Review Boards and identified \$50,000 as the point at which a formal process was required. In the old statute, it was not totally clear that a request for proposal process was considered equivalent to an invitation to bid process for goods and services contracts. The City's rules treated those the same over the past several years, and that was one of the changes the legislature made.

Councilor Loomis would like red-line version of amendments when possible.

Mr. Firestone said there were a couple of new exemptions, but the others were hardly changed. There were few substantive changes other than going from \$25,000 to \$50,000 on the exemption for contracts under a specified amount.

Councilor Stone understood if these rules were not adopted, then the City would be subject to state statutes.

Mr. Firestone said statutes controlled regardless, but he believed these Rules implemented the statutes. If these were not adopted, they Attorney General Model Rules, which were generally more bureaucratic, wordier, and harder to deal with for both the City and contractors, would apply.

Companion Measure for Clackamas County Fire District #1 Annexation

Mr. Swanson discussed the companion measure to the CFD1 annexation. The City Council requested that the District Board allow Milwaukie to submit at a future election the question of whether or not to annex the whole of the City into the District. Technically, Milwaukie had its own Fire Department by having a contract with CFD1, and Chief Whiteley was technically its Fire Chief. Currently, the annual budget for that contract was approximately equal to the amount the District would levy as its permanent rate of \$2.4012 per thousand valuation. The District Board approved the Milwaukie City Council's request and scheduled the election for May 17.

When Milwaukie went to the voters in September 2003, the Council committed without any formal action that the net tax effect would be zero. He got a lot of calls before and after that election about how taxpayers could be assured that was the case. If the annexation were approved, the immediate effect would be that the District could levy up to its permanent rate of \$2.4012. Without any other action, that did mean an increase in taxes.

Mr. Swanson proposed that when the City Council certified the measure to the County Clerk that it also takes action to ensure it was clear that Milwaukie's intention was to reduce the levy of the permanent rate by \$2.4012. He believed there had to be some indication that there would not be a tax increase either in a separate ballot question or within the annexation question itself. By doing this, he was in no way indicating that the City did not need the money. The question before the group was the annexation. Loading the annexation measure with any additional tax questions was probably tantamount to defeating it. The annexation was important because the contract relationship was at the sufferance of the District Board. The City had a history of good relationships with the Board, but

some time in the future a new Board may adopt a policy that said it would no longer provide services by contract. Mr. Swanson saw this as an issue of providing fire suppression, education, and emergency medical services to people in the City. The current contract with CFD1 expired in 2008, and he had every reason to believe the current Board would execute a subsequent contract.

Councilor Stone asked for an example of why the Board might not wish to renew a contract.

Mr. Swanson said 15 years ago civil words were not spoken between the fire districts and the cities. Milwaukie was, in terms of annexation, potentially a competitor. The effect of a city annexation was to remove the fire district from serving that area. Right now, the effect would be that the contract would have to be renegotiated, and the City would have to pay more to cover the annexed area. A future Board could say a city was too much of a threat because if it did aggressively annex. There would be nothing to prevent the city from reconstituting its own fire department, which created a certain amount of competition into the process. Also, people were sometimes elected who had personal agendas to shake things up.

Mr. Firestone commented that if Milwaukie were to annex its urban services area, it could be quite a hit to the District. That was one situation in which relationships might sour, and Milwaukie was considering at least some annexations in the future. In the future, the District might want to negotiate a contract the City could not afford.

Mr. Swanson added it was not long ago that cities and fire districts regarded each other as threats, and annexation would remove that. He wanted to ensure that services were uninterrupted and not subject to political or personal disputes. He proposed a net zero. He referred to the staff memo that laid out options for adding back funding for some services and what it would cost to fund a planner, police officers, and current library services. The general fund was the only discretionary money the City had. If the City Council decided it wished to capture a portion of that \$2.40, then he recommended that Measure not designate where the funds would go. He urged keeping the general fund as discretionary as possible.

Mr. Swanson served on the LNIB Board, and he suspected that the City had not seen the last of the County funding cuts. Milwaukie was looking at about a \$120,000 gap next fiscal. There was no assurance that the \$6.535 million dedicated to library funding would survive in subsequent years. If the City Council decided on the net zero option, there could be a companion measure that directed the City to levy \$2.4012 less than the permanent rate for an identified number of years. That would mean at the end of that time period, the City could levy its full permanent rate. The other option would be to direct the Council to decrease the levy of the permanent rate by \$2.40. The City would have that room to move but not without asking for voter approval. The permanent rate did not go away – it was the City's taxing authority – but the Council would have to ask for voter approval.

Mr. Swanson believed annexing to the District was a positive move and resolved an issue. He also believed that any increase in taxes that resulted from this would make the annexation a very hard sell. The City would be reducing its levy of the permanent rate by \$2.4012 per thousand valuation.

Councilor Collette understood from the staff report that it would only cost about \$.23 to have library services, a planner, and a police officer. Theoretically, if the City reduced its levy of the permanent rate by \$2.15, it could fund those two positions and meet the library deficit. She understood, it would be a harder sell, but it would be much-needed money back into the general fund.

Mr. Swanson recommended saying the levy of the permanent rate would be reduced by \$2.4012. He recommend leaving that \$2.4012 on the table. If the City wanted to recapture \$.25, then it would have to ask the voters at a future election.

Councilor Collette discussed the feasibility of two measures on the ballot.

Mr. Swanson said the first question could be, shall the district annex all the territory in the City. The second question could be, if the first question were successful, shall the City Council be directed to reduce its levy of the permanent rate by \$2.4012, which was the District's permanent rate. According to the input he got the last time this was on the ballot, voters thought the measure was complicated and confusing.

Councilor Stone asked how the long permanent rate has been \$6.5379.

Mr. Swanson replied the permanent rate had been in effect since the adoption of Measures 47 and 50 in 1998.

Mr. Firestone added permanent rates were frozen at a moment in time, and the counties were required to establish the permanent rates for all jurisdictions. Permanent rates have been in place since 1998 and would be there forever. Each jurisdiction's ability to tax was dependent upon what they spent in the couple of years prior to 1998.

Councilor Stone understood from the staff memo that Mr. Swanson recommended putting this on the ballot with the City's permanent rate less \$2.40 for a period of three years. She wanted to clarify that he was dropping the three years.

Mr. Swanson said that was correct. This was about the annexation. If the City contracted into the future, one would have to hope the annual contract amount would be at the District's permanent rate. Milwaukie was not actually going to lose any spending authority. It would open up the potential for additional tax, but not without the vote of the people. If the District wanted to levy beyond its permanent rate of \$2.40, then it would have to submit a local option tax for a maximum of 5 years to the voters.

Mr. Firestone added if the District asked for a local option tax, Milwaukie residents would be able to vote on it if the annexation were approved.

Councilor Barnes understood Mr. Swanson's concerns. Her long-term concern was the library, the police department, and the planner position. Mr. Swanson could only take on additional responsibilities for so long. The police needed more officers. The Budget Committee has had to use contingency to sustain the library services. How did the City provide basic, essential services if it did not have the money? The door was at least open a smidge to fund a part of the two most essential City services. Before going into the budget session, she wanted to know what the Budget Committee could tell the public who was clambering to maintain library and public safety services. What did the City Council say to those people when there was a chance for a little bit of money?

Mr. Swanson did not believe the City Council would lose the option but rather could exercise it at a time when it would not have an adverse impact on the annexation question. The City could still go back and ask the voters to approve \$.25 at another time. This would be Milwaukie's second attempt at the annexation. In 2002 people said, almost to a person, that if it was revenue the City wanted, then it should ask for a local option tax. If the City wanted an annexation, then ask for an annexation, but do not cloud one issue with the other. Mr. Swanson was not comfortable asking the firefighters' union to step forward and support a measure he made more difficult to pass. They were the ones who would be carrying the financial burden of making the annexation work, and he felt he had the responsibility to give them every advantage. Oregon City was struggling with this issue right now and would probably do something to both annex and capture some money. He lived in fear that Oregon City would pass the annexation and additional money, but Milwaukie's annexation attempt would fail. He felt, however, this was the best direction. If the annexation passed, then the City would have to make the best argument possible for additional funds in that forum. He believed tax neutral was the measure's best chance.

The group discussed recent levy attempts including the countywide library levy.

Councilor Barnes supported Mr. Swanson's proposal, but she went on record to say that the library, police, and planner were extremely important as well. Milwaukie needed a long-range plan to find the money to take care of essential services.

Councilor Collette agreed with Councilor Barnes. It was with a heavy heart that she supported Mr. Swanson's recommendation. She did not believe people voted against it because of any revenue issues. She believed people voted against the last annexation measure because they thought they were voting on whether or not Milwaukie should keep its own fire department.

Councilor Stone heard it failed because people thought their taxes would go up. When she initially read Mr. Swanson's staff report, she supported the annexation but was apprehensive about voters facing some increases in taxes at the end of a 3-year period. She came in willing to look at some sunset provision that would recoup the money. She agreed with Mr. Swanson about separating the issues. The City could hold its breath and look for the revenue in the budget cycle.

Councilor Loomis agreed that people just did not trust it. If the money was there, the City would take it. That was what the voters said. He did not support the three years either. He could have supported tagging something on, but he thought Mr. Swanson's comments were accurate. The District could increase the contract amount in the future, and the City would have no power. The hard part was giving up the fire department and never going back because of the expense.

Councilor Stone asked how our fire department felt about the annexation.

Mr. Swanson said the former Milwaukie firefighters that he spoke to were in favor of the annexation. When the City had its own department, first response was out of two stations. Now Milwaukie had first response from four stations, and the response capability increased. These firefighters were also working for a department that was fully accredited, and that would enhance their careers whether they stayed with CFD1 or went elsewhere. He discussed the cost of apparatus and the expense of providing fire services.

Mayor Bernard adjourned the work session at 6:53 p.m.

Pat DuVal

Pat DuVal, Recorder